TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 452

CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA, AND EDWARD C. DEARDEN, SR., PETITIONERS,

vs.

NORMAN KLAUDER, TRUSTEE OF QUAKER CITY SHEET METAL CO., BANKRUPT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 12, 1942.

CERTIORARI GRANTED NOVEMBER 9, 1942.

SUPREME COURT OF THE UNITED STATES

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INDEX

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—2302

[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 21312. In Bankruptcy

In the Matter of QUAKER CITY SHEET METAL COMPANY, Bankrupt

RELEVANT DOCKET ENTRIES

April 18, 1940. Petition filed. Subpoena exit—returnable April 29, 1940.

May 7, 1940. Adjudication of bankruptcy, filed.

June 7, 1940. Bond of Norman Klauder as Trustee in $5000, with New Amsterdam Casualty Co. as surety, approved and filed.

April 29, 1941. Certificate for Review re claim of Edward C. Dearden, Sr., filed.

April 29, 1941. Certificate for Review, re claim of Corn Exchange Nat. Bank and Trust Co., filed.

May 22, 1941. Praecipe to place on argument list Certificate for review re claim of Edward C. Dearden, Sr., filed.

May 22, 1941. Praecipe to place on argument list Certificate for Review re claim of Corn Exchange Natl. Bank & Trust Co., filed.

June 16, 1941. Hearing on certificate for review re claim of Corn Exchange National Bank.

June 16, 1941. Hearing on certificate for review re claim of Edward C. Deardon, Sr.

Sept. 17, 1941. Memorandum affirming orders of Referee re claim of Corn Exchange National Bank and Trust Co., and re Claim of Edward C. Dearden, Sr., filed.

Nov. 10, 1941. Final decree affirming orders of Referee re claim of Corn Exchange National Bank and Trust Co. and re Claim of Edward C. Dearden, Sr., filed.

(Noted 11/10/41—Copies sent to Counsel.)

[fols. 2-4] Nov. 25, 1941. Notice of appeal filed. (11/26/41 Copy to W. F. Mikell and L. H. Van Dusen).

Nov. 25, 1941. Copy of Clerk's notice of appeal filed.

Dec. 10, 1941. Designation of record on appeal filed.

Dec. 10, 1941. Designation by appellee, Edward C. Dearden, Sr., of additional portion of record to be included in record on appeal filed.

Dec. 10, 1941. Designation by appellee, Corn Exchange National Bank and Trust Co., of additional portion of record to be included in record on appeal filed.

[fol. 5] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR RECLAMATION OF $1550

To the Honorable the Judges of the said Court:

Edward C. Dearden, Sr., petitioner herein, seeks to recover the sum of $1550 in the hands of Norman Klauder and B. Mitchell Simpson, Receivers in Bankruptcy of Quaker City Sheet Metal Company and/or its Trustee in Bankruptcy, Norman Klauder, and in connection therewith Respectfully Represents:

1. The involuntary petition in bankruptcy in this case was filed on or about April 18, 1940 against Quaker City Sheet Metal Company (hereinafter called the Company).

2. Prior to the institution of the instant proceedings and on or about April 12, 1940 your petitioner, Edward C. Dearden, Sr., at the instance of Quaker City Sheet Metal Company and its Creditors' Committee, hereinafter referred to, loaned to Company the sum of $1550 in consideration of the receipt by your petitioner of a certain assignment by said Company to your petitioner, a true and correct copy of which is hereto attached, marked "Exhibit A" and made a part hereof.

3. The circumstances under which the aforesaid loan of [fol. 6] $1550 made by your petitioner to said Company was made and said assignment marked "Exhibit A" hereof was executed and delivered by said Company to your Petitioner are as follows:

4. The Company was engaged in the business of fabrication, erection and sale of all types of sheet metal work. During the Spring of 1938 the Company became in financial

difficulties and at the instance of its larger creditors there was formed a Creditors' Committee to represent creditors joining in the creditors' agreement and to supervise the business of the Company in the interest of the creditors. The Committee, consisting of L. Norris Hall, V. W. Hayden, B. M. Simpson and Norman Klauder, was formed under the terms of a certain written agreement dated April 27, 1938 between the said Committee, the Company and such of its creditors as joined in the agreement. A true and correct copy of the said creditors' agreement is hereto attached, marked "Exhibit B" and made a part hereof. Substantially all of the then important creditors of the Company signed the said creditors' agreement and thereby appointed the said Committee as their agent in connection with the affairs of the Company. The creditors who signed the said agreement, and whose claims aggregate approximately 80% of the present claims of creditors against the bankrupt, excluding the secured claim of Corn Exchange National Bank and Trust Company, are as follows: Apollo Steel Company, Chase Brass & Copper Co., L. Norris Hall, Inc., Wheeling Corrugating Co. and William A. Simpson & Son.

5. The term of the said creditors' agreement (Exhibit B hereof) was, by mutual consent of the parties thereto, extended from time to time to August 27, 1940.

[fol. 7] 6. The said Creditors' Committee, functioning as a representative of the aforesaid creditors, supervised and was familiar with all of the activities of the Company from the time of its inception until the date of bankruptcy. Shortly prior to April 12, 1940 the Company, having exhausted its cash and being unable to meet its current payroll, was faced with the necessity of raising cash for its current payroll; accordingly, the Creditors' Committee urged the President of the Company to secure the aforesaid loan of $1550. from your petitioner for the purpose of meeting the current wages payable to its employees constituting its then current payroll and suggested through the attorneys for the said Creditors' Committee, Jenkins, Bennett & Libby, Esqs., that the said loan be obtained and secured by an assignment of a certain contract between Company and York Ice Machinery Corporation, dated March 12, 1940, evidenced by York Ice Machinery Corporation's purchase order No. 89113 of March 12, 1940.

7. The Company, under the supervision of and at the instigation of the said Creditors' Committee, obtained the said loan of $1550. from your petitioner in consideration of the execution and delivery by the Company to him of the aforesaid assignment of said contract with York Ice Machinery Corporation and the proceeds thereof, as more particularly set forth in the said assignment (Exhibit A hereof).

8. The said assignment was prepared by counsel for the Creditors' Committee, Jenkins, Bennett & Libby, Esqs. and executed and delivered as therein recited.

9. Your petitioner has received no payment of any sort on account of the said loan nor has he received any of the proceeds due by reason of performance of the said contract with York Ice Machinery Corporation by the Company.

[fol. 8] 10. On or about May 4, 1940, William E. Mikell, Jr., Esq., as attorney for your petitioner, notified Jenkins, Bennett & Libby, Esqs., attorneys for the Receivers of the bankrupt, of the claim of your petitioner to the proceeds of the said contract of York Ice Machinery Corporation. A true and correct copy of said notice is hereto attached, marked "Exhibit C" and made a part hereof. At that time the said contract with York Ice Machinery Corporation had been partially performed by the Company prior to its bankruptcy. The Receivers had no funds with which to complete the contract.

11. On June 18, 1940, when the said Trustee in Bankruptcy had been appointed, said attorney for your petitioner notified the Trustee of the said assignment and the claim of your petitioner to the proceeds of the said contract as aforesaid. A true and correct copy of the said notice is hereto attached, marked "Exhibit D" and made a part hereof.

12. Your petitioner has been advised and therefore avers that on or prior to August 20, 1940 Norman Klauder as Trustee in Bankruptcy of the above named bankrupt, received from York Ice Machinery Corporation on account of the said contract the sum of $1591., which he is holding subject to the disposition of this claim by your petitioner to the proceeds of the said contract so received. Your petitioner is informed and therefore avers that the full contract

price set forth in said contract between the Company and York Ice Machinery Corporation was $2711. Your petitioner is informed by the Trustee and therefore avers that the said Trustee agreed with York Ice Machinery Corporation for a credit to York Ice Machinery Corporation of $1120. as the cost of completion by York Ice Machinery Corporation of the aforesaid contract. The said sum of $1591 in the hands of the Trustee as aforesaid represents [fol. 9] the balance paid by York Ice Machinery Corporation to the Trustee in Bankruptcy for partial performance by the Company of said contract.

13. Your petitioner is informed, believes and therefore avers that all of the said sum of $1550. loaned by him to the Company under the circumstances aforesaid, was in fact used for the payment of current wages by the Company to its employees.

Wherefore your petitioner prays that an order be entered directing Norman Klauder and B. Mitchell Simpson, as Receivers in Bankruptcy of Quaker City Sheet Metal Company, and/or Norman Klauder as Trustee of the aforesaid bankrupt, to turn over to and pay to your petitioner the said sum of $1550. which your petitioner claims to own by reason of the aforesaid assignment and the circumstances heretofore recited.

And your petitioner will ever pray.

Edward C. Dearden.

Duly sworn to by Edward C. Dearden, Sr. Jurat omitted in printing.

[fol. 10] EXHIBIT "A" TO PETITION

Know All Men by These Presents, That whereas the York Ice Machinery Corporation has entered into an agreement with the Quaker City Sheet Metal Company for the installation of certain materials and equipment to be manufactured by the Quaker City Sheet Metal Company, said agreement being dated March 12, 1940, and further evidenced by purchase order No. 89113 of same date,

And whereas Edward C. Dearden, Sr. has advanced to the Quaker City Sheet Metal Company certain sums of money, to wit One Thousand Five Hundred Fifty Dollars ($1,550.00) under date of April 12, 1940.

Now, therefore, for and in consideration of the monies so advanced by Edward C. Dearden, Sr. as well as for other good and valuable consideration and in order to better secure the repayment of the said money to Edward C. Dearden, Sr.,

The Quaker City Sheet Metal Company has assigned, set over, transferred and conveyed, and by these presents does assign, transfer, set over and convey to said Edward C. Dearden, Sr., his heirs, administrators, executors and assigns, any and all of its right, title and interest in and to the said agreement with York Ice Machinery Corporation hereinabove referred to and any monies now due, or hereafter to become due, to the Quaker City Sheet Metal Company by reason of the said agreement and/or purchase order, together with the right to demand, sue for, collect and receive the same, and to apply any sums received thereunder to the payment of the said indebtedness of the Quaker City Sheet Metal Company to the said Edward C. Dearden, Sr., together with any reasonable expense incurred for the collection thereof provided, however, that any surplus received over and above the amount necessary for the repayment of the said Edward C. Dearden, Sr. shall be refunded to the said Quaker City Sheet Metal Company.

[fol. 11] In Witness Whereof, the said Quaker City Sheet Metal Company has caused these presents to be executed by E. C. Dearden, Jr., its President, duly attested by Robert M. Carrigan, its Secretary, and the corporate seal affixed hereto this 12th day of April, 1940.

Quaker City Sheet Metal Company, by E. C. Dearden, Jr., President. (Corporate Seal.)

Attest: Robert M. Carrigan, Secretary.

[fol. 12] EXHIBIT "B" TO PETITION

Agreement made as of April 27th, 1938, by and between Quaker City Sheet Metal Co., a Pennsylvania corporation, party of the first part (hereinafter called Debtor), L. Norris Hall (of L. Norris Hall, Inc.), V. W. Heyden (of Chase Brass & Copper Co.), W. W. Keefer (of Apollo Steel Company), B. M. Simpson (of W. A. Simpson & Son), and Norman Klauder, parties of the second part (hereinafter called Committee), and Creditors of Debtor signatory hereto, par-

ties of the third part (hereinafter jointly and severally called Creditors), Witnesseth:

Whereas Debtor is unable to meet its obligations in the ordinary course of business, and desires to obtain from Creditors, and Creditors are willing to grant, an extension of time for the payment of their respective claims;

Now, Therefore, in consideration of the obligations imposed upon and benefits to accrue to Company and Creditors respectively, and in consideration of the mutual promises of the parties hereto, the several parties hereto (each for himself or for itself and not for any of the other parties), each party covenanting to be legally bound hereby, do agree as follows:

1. Creditors signatory hereto hereby make, constitute, and appoint the parties of the second part and their respective successors, as the Creditors' Committee under this agreement, with all of the rights and privileges vested in the aforesaid Committee hereunder.

2. That the books, records, and papers of the Debtor shall at all times be open to the inspection of the said Creditors' Committee and/or any of the Creditors of the Debtor.

3. That Committee shall have the right to accept or refuse all contracts that may be offered to Debtor hereafter, and shall have control of all goods and merchandise that may hereafter be purchased by Debtor and the salaries and [fol. 13] wages to be paid to any and all employees of Debtor and of such details of the business of Debtor as may be necessary in order that it may be conducted to the best advantage of Creditors.

4. Creditors signatory hereto hereby extend the time for Debtor to pay its present indebtedness to them for the period of six months from the effective date of this agreement, and further agree to vest in Committee the authority to postpone the payment of said indebtedness for the further period of six months thereafter if, in Committee's discretion, such further postponement of indebtedness is in the interest of Creditors.

5. Creditors agree that, while this agreement is in effect, no action shall be brought to enforce the collection of Creditors' claims now due; but nothing herein contained shall constitute a limitation upon the rights of creditors to en-

force their respective claims at the conclusion of this agreement.

6. Debtor will, during the term of this agreement, act under the advice of Committee and will, at the end of each week, make and deliver to Committee a general account of its receipts and disbursements and of other matters or transactions relating to the general conduct of its business up to the end of the week next preceding, as shall be requested by Committee. Committee may, at any reasonable time, examine the books of Debtor and investigate its receipts and disbursements and the general conduct of its business, and for this purpose shall have the right to employ a certified public accountant at the expense of Debtor.

7. Committee shall have the right to make provision for and to deal with any claim, lien, or obligation which may affect the assets of Debtor, and may liquidate, settle, compromise, and adjust any such claim or claims upon such terms as in its judgment may be for the best interest of all parties hereto.

8. Committee shall serve without compensation, and shall not be responsible, either as individuals or collectively, for [fol. 14] any matter or thing hereunder, except that each member of Committee shall be responsible only for his own willful misconduct. Any member of Committee and any firm or corporation in which any such member is interested, may sell merchandise and loan money to Debtor and become pecuniarily interested in any transaction to which Debtor may be a party, or in which it may have an interest, or be in any way concerned.

9. Creditors hereby agree that their claims, as of April 27th, 1938, are hereby subordinated in payment to all new liabilities assumed by Debtor, including money borrowed and merchandise purchased in the ordinary course of business subsequent to April 27th, 1938, and to the costs and expenses of the Creditors' Committee, its agents, attorneys, and representatives.

10. Any vacancy in Committee arising from any cause whatsoever shall be filled by the vote of the surviving or remaining members of Committee. Any member of Committee shall have the right at any time to resign or withdraw. In all action to be taken by Committee, a majority

shall control. Any member of Committee may vote by proxy at any meeting of Committee.

11. Debtor will pay the reasonable expenses and disbursements of Committee incurred in the performance of their rights and duties under this agreement.

12. Debtor agrees to continue the Corn Exchange National Bank and Trust Company of Philadelphia as its banking depository, and no change in its banking depository shall be made without the consent of the Committee. All moneys received by Debtor and all disbursements of Debtor shall be made from said bank account, and all checks, drafts, bills of exchange, and other negotiable instruments shall be signed by an officer of Debtor and L. Norris Hall, chairman of said Committee.

13. No dividends on the stock of Debtor shall be declared or paid during the term of this agreement.

fols. 15-19/ 14. It is the intent of this agreement that the business of Debtor shall be continued during and for such time as Committee shall deem it to the best interest of Creditors to have it continued, and such business shall be discontinued, liquidated, and wound up at any time that Committee may so direct; and Debtor expressly covenants that it will make such necessary transfers of its assets and execute such instruments as may be necessary to carry out the wishes of Committee, if Committee shall determine at any time that discontinuance, liquidation, and winding up of Debtor and/or its business shall be advisable.

15. This agreement shall be deemed to be made under and governed by the laws of the State of Pennsylvania, including all matters of construction, validity and performance.

16. This agreement shall be considered executed on the 27th day of April, 1938, although signed by the parties hereto from time to time thereafter on this or on duplicate original copies hereof, all of which shall be considered as one instrument, with the same force and effect as if the signatures thereto were upon one paper and executed at one and the same time. It shall be binding upon the parties hereto, their and each of their respective executors, administrators, successors, and assigns.

Witness the signatures and seals of the parties hereto as of the day and year first above written.

Quaker City Sheet Metal Co., by E. C. Dearden, Jr., President.

Attest: Robert M. Carrigan, Secretary.

[Five duplicate originals each signed by one of the following:]

Wm. A. Simpson & Son, B. M. Simpson, Secy. (Seal.)

Apollo Steel Co., by A. M. Oppenheimer, Pres. (Seal.)

Chase Brass & Copper Co. Incorporated, V. W. Heyden, Asst. Treas. (Seal.)

L. Norris Hall, Inc., L. Norris Hall, Pres. & Treas. (Seal.)

Wheeling Corrugating Co., E. A. Rose, Treas. (Seal.)

[fol. 20] In United States District Court.

[Title omitted]

Trustee's Answer to Reclamation Petition of Edward C. Dearden, Sr.

United States of America,
Eastern District of Penna., ss:

Norman Klauder, being duly sworn according to law, deposes and says that he is the Trustee for the Estate of the above named Bankrupt and upon information and belief, makes answer to the allegations contained in the Reclamation Petition of Edward C. Dearden, Sr., as follows, to wit:

1. Admitted.

2. Admitted.

3. Deponent is informed, believes and avers that there is no averment of fact in the Third Paragraph of the Reclamation Petition requiring answer and hence makes none.

4. Deponent admits that the Bankrupt was engaged in the business of fabrication, erection and sale of all types

of sheet metal work; that during the Spring of 1938 it became financially involved and that at the instance of its larger creditors a Creditors' Committee was formed to represent creditors joining in a creditors' agreement and to supervise the business of the company in the interests [fol. 21] of the creditors and that the Committee, consisting of L. Norris Hall, V. W. Hayden, B. M. Simpson and Norman Klauder was formed under the terms of an agreement dated April 27th, 1938, all of which is set forth at length and at large in Exhibit "B" attached to the Reclamation Petition and that substantially all of the then important creditors of the company executed the agreement and that those so signing appointed the Committee as their agent in connection with the affairs of the company. Deponent admits that the agreement was signed by or on behalf of Apollo Steel Company, Chase Brass & Copper Co., L. Norris Hall, Inc., Wheeling Corrugating Co. and William A. Simpson & Son, but denies that the claims of those creditors aggregate approximately 80% of the present unsecured claims of creditors of the Bankrupt, all of which will more fully appear by a reference to the schedules of the Bankrupt, as well as in the proofs of claim filed in this proceeding.

5. Admitted.

6. Deponent admits that the Creditors' Committee, functioning as a representative of the creditors signatory, supervised and was familiar with the activities of the company from the time of its inception until the date of bankruptcy and admits that shortly prior to April 12th, 1940 the company, having exhausted its cash and being unable to meet its current expenses, was faced with the necessity of raising funds for its payroll as well as other operating expenses. Deponent, upon information and belief however, denies that the Creditors' Committee urged the President of the company to secure the loan of $1550.00 from the Reclamation Petitioner or that it was suggested through the attorneys for Creditors' Committee, Jenkins, Bennett and Libby, Esquires, that the loan be obtained and secured by [fol. 22] an assignment of a certain contract between the company and the York Ice Machinery Corporation as averred in the Sixth Paragraph of the Reclamation Petition. If it be material, deponent admits, however, that the loan of $1550.00 was obtained from the Reclamation

Petitioner on or about April 12th, 1940 and was secured or intended to be secured in the fashion more particularly described in the agreement bearing the same date thereof, attached to and made a part of the Reclamation Petition and marked Exhibit "A".

7. Admitted.

8. Admitted.

9. Admitted

10. Admitted.

11. Admitted.

12. Admitted.

13. Facts as averred admitted and materiality denied.

Deponent is informed, believes and therefore avers that no notice of the Assignment of the account, contract and or order was ever given by Edward C. Dearden, Sr., the Reclamation Petitioner, to the York Ice Machinery Corporation; that after the date of the said Assignment unrestricted dominion over the said contract, account and or order was exercised by the Quaker City Sheet Metal Company up until the date of bankruptcy, as a consequence of which deponent is informed by counsel, believes and therefore avers that the surrender and or delivery of the sum of $1550.00 or any other sum or part thereof to Edward C. Dearden, Sr., the Reclamation Petitioner, would constitute [fol. 23] a preferential payment within the meaning of the Bankruptcy Act of 1898 as amended and that consequently the prayer of the Petition should be denied.

Wherefore, deponent prays that the Petition be dismissed with costs.

Norman Klander.

Sworn to and subscribed before me this 7th day of March, A. D. 1941. Chas. H. Ward, Notary Public. My Commission Expires March 5, 1948.

[fols. 24-25] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

Statement of Evidence

Hearing before Henry W. Braude, Esq., Referee, sur claims of Edward C. Dearden, Sr., held at the offices of the said Referee, room 3038, United States Court House, Philadelphia, Pa., on Thursday, March 27, 1941, at 3:00 o'clock P. M., pursuant to notice.

Present: Henry W. Braude, Esq., Referee. Bertram Bennett, Esq., for the Trustee. Lewis H. Van Dusen, Esq., for the Corn Exchange National Bank and Trust Company. William E. Mikell, Esq., for Edward C. Dearden, Sr.

CLAIM OF EDWARD C. DEARDEN, SR.

Mr. Mikell:

* * * * * * *

[fol. 26] I think that practically all of the pertinent facts are set forth and admitted in the petition of Edward C. Dearden, Sr. and the answer filed on behalf of Mr. Klauder as receiver and trustee.

I, therefore, assume that it can be agreed that the allegations of the petition of Edward C. Dearden, Sr., and the responsive answers of the receiver and trustee may be taken as having been read and offered in evidence, with the exception of the last paragraph of the answer which I do not [fol. 27] offer in evidence as it is not responsive to the allegations in the petitions, the conclusion of law,—I do not offer that in evidence.

The Referee: He undertook to decide the question:

Mr. Mikell: And I do not admit that no notice was given on behalf of Mr. Dearden to the York Ice Machinery Company prior to the bankruptcy in this matter. It is my contention that that is unnecessary.

* * * * * * *

[fols. 28-29] Mr. Bennett: There is no doubt that the Creditors' Committee knew these moneys were borrowed from Mr. Dearden, Sr., and that assignment was given to him as security.

If Mr. Mikell will make an offer of proof maybe we can agree to it.

Mr. Mikell: I offer to prove by Mr. Dearden that this particular loan, to be secured by the assignment in question, the papers for which were prepared on behalf of the Creditors' Committee by Mr. Bennett's firm, was the subject of a full meeting of the Creditors' Committee prior to the time it was assigned and authorized by them.

Mr. Bennett: That is right. I will agree to that.

* * * * * * * *

[fols. 30-35] In District Court of the United States for the Eastern District of Pennsylvania

In Bankruptcy

Cause No. 21312

In the Matter of Quaker City Sheet Metal Co., Bankrupt

Opinion and Order of Referee Sur Claim of Edward C. Dearden, Sr.

The amount involved in this reclamation petition is $1,550 and the factual situation is analogous to that of the Corn Exchange National Bank and Trust Co. claim, which was allowed as secured. (See opinion and order filed April 21, 1941). Here there was an assignment of a contract contemporaneously and in consideration of the loan. No notice was given to the debtor by the assignee prior to bankruptcy. The claim is allowed as a secured one.

Order

And Now, to wit, April 21, 1941, It Is Ordered, Adjudged and Decreed that the claim of Edward C. Dearden, Sr. must be, and hereby is, allowed as a secured claim in the sum of $1,550.

(S.) Henry W. Braude, Referee in Bankruptcy.

[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

PROOF OF CLAIM.

Hector A. Sinzheimer, in the County of Montgomery, State of Pennsylvania, being duly sworn according to law, deposes and says:

1. That he is Assistant Vice-President of Corn Exchange National Bank and Trust Company, Philadelphia, a corporation organized and existing under the laws of the United States of America and carrying on business at 2nd and Chestnut Streets in Philadelphia, County of Philadelphia, State of Pennsylvania, and is duly authorized to make this proof of claim on its behalf.

2. That Quaker City Sheet Metal Company, a corporation, the above named Bankrupt, was at and before the filing against it of a petition for adjudication in bankruptcy, and still is, justly and truly indebted to said corporation in the sum of $7,954.51 with interest.

3. That the consideration for said debt is as follows:

(a) As to $119 thereof, moneys loaned and advanced to Quaker City Sheet Metal Company at its special instance and request, evidenced by the collateral promissory note (Exhibit 1) of Quaker City Sheet Metal Company dated January 19, 1940, in the amount of $1,930, payable on [fol. 37] demand. Claimant admits credits in the amount of $1,811 received on account of said note.

(b) As to $1,000 thereof, moneys loaned and advanced to Quaker City Sheet Metal Company at its special instance and request, evidenced by the collateral promissory note (Exhibit 2) of Quaker City Sheet Metal Company dated March 15, 1940, in the amount of $1,000, payable on demand.

(c) As to $2,200 thereof, moneys loaned and advanced to Quaker City Sheet Metal Company at its special instance and request, evidenced by the collateral promissory note (Exhibit 3) of Quaker City Sheet Metal Company dated March 23, 1940, in the amount of $4,280, payable on demand. Claimant admits credits in the amount of $2,080 received on account of said note.

(d) As to $540 thereof, moneys loaned and advanced to Quaker City Sheet Metal Company at its special instance and request, evidenced by the collateral promissory note (Exhibit 4) of Quaker City Sheet Metal Company dated March 29, 1940, in the amount of $540, payable on demand.

(e) As to $460 thereof, moneys loaned and advanced to Quaker City Sheet Metal Company at its special instance and request, evidenced by the collateral promissory note (Exhibit 5) of Quaker City Sheet Metal Company dated April 5, 1940, in the amount of $460, payable on demand.

(f) As to $1,450 thereof, moneys loaned and advanced to Quaker City Sheet Metal Company at its special instance and request, evidenced by the promissory note (Exhibit 6) of Quaker City Sheet Metal Company dated March 23, 1940, and payable May 31, 1940, in the amount of $1,450, and duly endorsed by Edward C. Dearden, Jr. and Robert M. Carrigan.

(g) As to $1,200 thereof, moneys loaned and advanced to Quaker City Sheet Metal Company at its special instance [fol. 38] and request, evidenced by the promissory note (Exhibit 7) of Quaker City Sheet Metal Company dated March 29, 1940, payable May 31, 1940, in the amount of $1,200, and duly endorsed by Edward C. Dearden, Jr. and Robert M. Carrigan.

(h) As to $1,000 thereof, moneys loaned and advanced to Quaker City Sheet Metal Company at its special instance and request, evidenced by the promissory note (Exhibit 8) of Quaker City Sheet Metal Company dated April 5, 1940, payable May 31, 1940, in the amount of $1,000, and duly endorsed by Edward C. Dearden, Jr. and Robert M. Carrigan.

(i) As to $4.36 thereof, interest upon Bankrupt's promissory note (Exhibit 1) in the amount of $1,930, dated January 19, 1940, upon the unpaid balances from April 1, 1940, to April 18, 1940, the date of the filing of the petition in bankruptcy.

(j) As to $3.00 thereof, interest upon Bankrupt's promissory note (Exhibit 2) in the amount of $1,000, dated March 15, 1940, upon the unpaid balances from April 1, 1940, to April 18, 1940, the date of the filing of the petition in bankruptcy.

(k) As to $10.41 thereof, interest upon Bankrupt's promissory note (Exhibit 3) in the amount of $4,280, dated March 23, 1940, upon the unpaid balances from April 1, 1940, to April 18, 1940, the date of the filing of the petition in bankruptcy.

(m) As to $1.07 thereof, interest upon Bankrupt's promissory note (Exhibit 5) in the amount of $460, dated 29, 1940, upon the unpaid balances from April 1, 1940, to April 18, 1940, the date of the filing of the petition in bankruptcy.

(n) As to $1.07 thereof, interest upon Bankrupt's promissory note (Exhibit 5) in the amount of $460, dated [fol. 39] April 5, 1940, upon the unpaid balances from April 5, 1940, to April 18, 1940, the date of the filing of the petition in bankruptcy.

The aggregate of the foregoing amounts is $7,989.46. Of this amount, $6,476.31 was advanced expressly to meet the bankrupt's payroll, and all of this money was in fact used to pay wages earned within three months of the filing of the petition in bankruptcy, which would otherwise have constituted claims against this estate entitled to priority, no one of which claims would have equalled $600 for any one wage claimant. These advances to meet payroll are evidenced by the aforementioned exhibits, and are entitled to prior payment as claims entitled to priority by way of subrogation to and assignment of the wage claims which they in fact were used to pay. The balance of $1,478.20 is a secured claim without priority.

Claimant acknowledges credit against said indebtedness in the amount of $34.95, being the balance standing to the credit of said bankrupt with claimant upon the date of the filing of the petition in bankruptcy, making the net amount of claimant's partially secured claim not entitled to priority $1,478.20, and of its partially secured claim entitled to priority $6,476.31.

4. No part of said debt has been paid except as stated.

5. There are no set-offs or counter-claims against said debt.

6. That said corporation, claimant herein, does not hold, and has not, nor has any person by its order, or to this deponent's knowledge or belief, for its use, had or received

any security or securities for said debt, except the following accounts receivable which were assigned as collateral security for the payment of said notes in accordance with the terms of Exhibits, 1, 2, 3, 4 and 5 and other instruments of assignment:

Riggs Distler & Co., Inc.,	in the face amount of	$524.37
Pennsylvania Engineering Co.,	" " " "	1,407.88
C. C. Kottcamp & Son	" " " "	2,751.33
" " " "	" " " "	108.00
" " " "	" " " "	112.47
Achenbach & Butler, Inc.,	" " " "	426.95
Peters Engineering Co.,	" " " "	173.63
" " "	" " " "	75.82
Alfol Insulation Co., Inc.,	" " " "	137.49
Ehret Magnesia Mfg. Co.,	" " " "	228.06
		$3,946.00

[fol. 40] *And except further* an assignment of the moneys due under a certain contract dated June 29, 1939, between Quaker City Sheet Metal Company and William H. Walters & Sons, under which the said Bankrupt agreed to supply sheet metal, and to do sheet metal work at the Eastern Regional Agricultural Research Laboratories in Wyndmoor, Pennsylvania, in accordance with an agreement of assignment, copy of which is attached hereto and made a part hereof, and marked Exhibit 9. Claimant advanced moneys to the Bankrupt, on the dates shown, to meet the payroll of the said Bankrupt under the said contract with William H. Walters & Sons. The amount of said fund to which the claimant is entitled under said assignment is not presently exactly ascertainable. *And except further* an assignment of the moneys due under a certain contract dated May 24, 1939, between Quaker City Sheet Metal Company and C. C. Kottcamp & Son, under which materials were to be supplied and work done by Bankrupt upon the Municipal Court Building, 19th & Vine Streets, Phila., Pa., in accordance with an agreement of assignment, copy of which is attached hereto and made a part hereof, marked Exhibit 10. The amount of said fund to which the claimant is entitled under said assignment is not presently exactly ascertainable.

7. That the true and correct copies of the aforesaid notes, with all indorsements, are attached hereto and made a part hereof, marked Exhibits 1, 2, 3, 4, 5, 6, 7 and 8, respectively.

* * * * * * *

[fol. 41] In Witness Whereof said Corn Exchange National Bank and Trust Company, Philadelphia, has caused these presents to be executed by its proper officer, and its corporate seal, duly attested, to be hereunto affixed, the 9th day of May, 1940.

Hector A. Sinzheimer, Assistant Vice-President of said Corporation. (Seal.)

Corn Exchange National Bank and Trust Company, Philadelphia, by Hector A. Sinzheimer. (Corp. Seal.)

Signed, Sealed and Delivered in the Presence of: W. J. Smedley.

Attest: B. G. Walton, Asst. Cashier.

Duly sworn to by Hector A. Sinzheimer. Jurat omitted in printing.

[fols. 42-43] EXHIBIT #1

$1,930.00. Philadelphia, January 19, 1940.

On Demand after date without defalcation for value Received We promise to pay to the order of Corn Exchange National Bank and Trust Company, Philadelphia Nineteen Hundred Thirty Dollars With Interest, having deposited as collateral security for payment of this or any other liability or liabilities to the holder hereof, due or to become due, or that may be hereafter contracted, the following property, viz.:

Assigned accounts receivable in sum of $2,416.76.

Quaker City Sheet Metal Co., E. C. Dearden, Jr., Pres. L. Norris Hall.

Payable at Corn Exchange National Bank and Trust Company, Philadelphia.

EXHIBITS 2, 3, 4, AND 5, except for amounts and dates, are substantially identical to Exhibit 1.

(Here follows 1 photolithograph, side folio 44)

EXHIBIT #6

COPY COPY COPY

$ 1,450.00 PHILADELPHIA March 23, 1940

ON May 31 1940 AFTER DATE We PROMISE TO PAY TO

THE ORDER OF Corn Exchange National Bank [illegible] Company

AT CORN EXCHANGE NATIONAL BANK
AND [illegible] COMPANY
[illegible]ELPHIA.

Fourteen Hundred Fifty 00/100 DOLLARS

WITHOUT DEFALCATION VALUE RECEIVED.

Quaker City Sheet Metal Co.
E. C. Dearden, Jr.
L. Norris Hall

No. DUE

[fol. 45] Exhibits 7 and 8, except for dates and amounts, are substantially identical to Exhibit 6.

[fol. 46] Exhibit #9

Copy

Assignment of Order

Know All Men by these Presents, that the Quaker City Sheet Metal Co., hereinafter called "Company," in consideration of the sum of One Dollar and other good and valuable considerations, the receipt of which is hereby acknowledged, has bargained, sold, assigned, transferred and set over, and by these presents does bargain, sell, assign, transfer and set over unto Corn Exchange National Bank and Trust Company, Philadelphia, its successors and assigns, hereinafter, sometimes called "Bank," all moneys now due and payable and/or which may hereafter become due and payable to Company from William H. Walters and Sons of 1310 N. Carlisle Street, Philadelphia, hereinafter called "Purchaser," under an existing contract between Company and Purchaser resulting from an order dated June 29, 1939, for sheet metal work at the Eastern Regional Agricultural Research Laboratory in Wyndmoor, Penna., given by Purchaser to Company, which order was accepted by Company on —— —, ——, and all Company's right, title, interest, claim and demand in and to all said moneys and every part thereof.

To Have and to Hold, to the said Corn Exchange National Bank and Trust Company, Philadelphia, its successors and assigns, from henceforth to its and their own proper use and benefit forever.

Company hereby constitutes and appoints the President or any Vice-President, for the time being, of Bank its true and lawful attorney irrevocable with full power of substitution, hereby giving and granting to him, them, or any of them, or any substitute, full power and authority in the name of Company, its successors, and assigns, but to the only proper use of Bank, its successors and assigns, to ask, demand, sue for, recover, receive, compound, acquit, release and discharge said moneys, or any part thereof, and upon receipt of the same or any part thereof, acquittances,

or other proper discharges to make and deliver, and generally for it and in its name, or in the names of its successors and assigns, to make, do, perform and execute all and every such further and other acts, matters and things touching and concerning the premises as to the said attorney, or any substitute, shall deem requisite, and that as fully and effectually to all intents and purposes as it, its successors and assigns, could or might have done, hereby ratifying and confirming all and whatever said attorney, or any substitute shall lawfully do or cause to be done in or about the premises.

Company hereby covenants and agrees to and with Bank, its successors and assigns, that it has not done or suffered, and that it or its successors and assigns, shall not or will not do or suffer any act, matter or thing whereby or by reason whereof Bank, its successors and assigns, shall or may be hindered or prevented from recovering or receiving the said moneys or any part thereof hereby assigned, or such other satisfaction as can or may be had or obtained for the same by virtue of this agreement or otherwise howsoever.

Company further covenants that it, its successors and assigns shall and will at all times hereafter, at the request of Bank, its successors and assigns, make, do and execute all such further and other acts and deeds as shall be reasonably required for the proving of the debt arising out of said contract, and the better and more effectually enabling them to recover, receive and enjoy the same according to the true intent and meaning of these presents; and especially that, after the merchandise specified or described in said contract has been shipped to Purchaser, Company will make proper notations upon its books, and/or records showing the assignment to Bank of the moneys due to Company by Purchaser, and will execute and deliver to Bank a further assignment, in form satisfactory to Bank, of the claim or account arising out of the delivery of said merchandise to, and the acceptance thereof by, Purchaser.

Company agrees that all checks, notes, drafts, moneys or other mediums of payment of any kind, which are received on account of or in payment of any moneys due under said contract, as well as any goods or merchandise delivered thereunder, which are returned to Company, shall be the sole property of Bank, and shall be immediately paid, trans-

ferred, turned over, and delivered to Bank by Company, and until so paid, transferred, turned over and delivered, it is hereby expressly agreed that all checks, notes, drafts, moneys or other mediums of payment and property so received shall be held by Company as trustee under this agreement for Bank.

Company hereby expressly authorizes Bank by its officers and agents to endorse Company's name upon and negotiate for the use of Bank all commercial paper payable to Company's order representing moneys due under said contract which may come into Bank's hands.

The within assignment shall constitute full and complete authority in and to Purchaser, his or its heirs, executors, administrators, successors and/or assigns, to make payment to Bank, its successors and assigns, of all sums due or to become due under said contract, and shall further constitute a request and direction by Company to Purchaser to make such payments to Bank, its successors and assigns, and upon such payments being made by Purchaser, the same shall constitute a full and complete payment and discharge of liability to Company to the extent of such payments respectively.

The within assignment is made and executed by Company in accordance with the authority given to the undersigned officers by the Board of Directors thereof.

Witness the common or corporate seal of Quaker City Sheet Metal Co. hereunto affixed, duly attested, this 20th day of October, A. D. 1939.

By E. C. Dearden, Pres. Attest: L. Norris Hall, Chairman of Creditors Committee.

The undersigned hereby acknowledges receipt of an executed original of the foregoing assignment, dated Philadelphia, —— —, 193—.

[fols. 47-50] Except for the name of the Purchaser, the nature of the work, and dates, Exhibit 10 is identical to Exhibit 9.

[fols. 51-54] In United States District Court

[Title omitted]

Statement of Evidence

Hearing before Henry W. Braude, Esq., Referee, sur claims of the Corn Exchange National Bank and Trust Company, held at the offices of the said Referee, room 3038, United States Court House, Philadelphia, Pa., on Thursday, March 27, 1941, at 3:00 o'clock P. M., pursuant to notice.

Present: Henry W. Braude, Esq., Referee. Bertram Bennett, Esq., for the Trustee. Lewis H. Van Dusen, Esq., for the Corn Exchange National Bank and Trust Company. William E. Mikell, Esq., for Edward C. Dearden, Sr. Edward C. Dearden, Sr., a witness. Hector A. Sinzheimer, a witness.

Colloquy between Referee and Counsel

. . . . . .

[fol. 55] Mr. Bennett: I think that we can boil it down considerable by agreement.

The trustee is willing to concede that the claim of the Corn Exchange National Bank and Trust Company amounting to $7954.51, as shown in its proof of claim and is composed as therein shown, in that on the dates shown certain moneys were advanced to the bankrupt, more particularly——

[fols. 56-57] The Referee: That no portion of the claim is secured?

Mr. Bennett: We say that no portion is secured; the loans and the dates——

The Referee: Are they correctly set forth in the proof?

Mr. Bennett: Yes, sir. If the proof of claim can be incorporated in the record, I have no objection.——

Mr. Van Dusen: You admit the facts appearing in the proof of claim are correct, but you say that due to the fact that no notice was given to the debtor of the assignment prior to the bankruptcy, the assignment, although made——

Mr. Bennett: Are ineffective as against the trustee.

. . . . . .

[fols. 58-59] Mr. Van Dusen: I would like to make the stipulation on the record, to see if Mr. Bennett agrees to it;

That paragraphs four, five, six, and seven of Mr. Mikell's petition on behalf of Edward C. Dearden, insofar as they are admitted by the trustee's answer, that those items to be treated as part of our case, and that it can be so stipulated?

Mr. Bennett: I believe that the entire answer, insofar as it is responsive to the petition and constitutes an admission to any allegation in the petition of Mr. Dearden, shall be applicable either to Mr. Dearden or to the Corn Exchange National — and Trust Company.

Mr. Van Dusen: That is satisfactory.

. . . . . .

[fol. 60] Mr. Van Dusen: May I ask Mr. Bennett this: Mr. Bennett, do you agree that these assignments which are in contest in our case were all made with the knowledge and the approval of the creditors Committee?

Mr. Bennett: Of the Creditors Committee, certainly.

. . . . . .

[fol. 61] Mr. Bennett: I will not go that far. I am not [fol. 62] asking that as a part of my agreement, but if that is important we can cover that later. The only thing that I am asking you to agree to is that you did not give any of the debtors notice of the assignment prior to bankruptcy?

Mr. Van Dusen: That is agreed to.

. . . . . .

Mr. Bennett: On that score, subject to what Mr. Dearden will say, are you willing to agree to that portion, that no [fol. 63] notice was given to any of the accounts.

Mr. Van Dusen: I agree that no notice was given by the bankrupt prior to the bankruptcy.

. . . . . .

[fol. 64] EDWARD C. DEARDEN, JR., having been duly sworn, was examined and testified as follows:

Direct examination.

By the Referee:

Q. Your full name?
A. Edward C. Dearden, Jr.

. . . . . .

[fol. 65] By Mr. Van Dusen:

Q. You were president of the Quaker Sheet Metal Company?
A. I was.
Q. When did you become president?
A. Sometime in 1936.
Q. And the company got into financial difficulties in the spring of 1938?
A. That is correct.
Q. What was the situation at that time?
A. Insufficient working capital to permit the company to carry out contracts then existing on its books.
Q. Then what did you do?
A. We called together the five principal creditors of our company and explained to them that we had these contracts to do or to complete, and that we did not have sufficient working capital to do it, and asked them to enter into some kind of an agreement to subordinate their claims and enable us to continue in business.

. . . . . .

[fol. 66] Q. And approximately what percentage of your total indebtedness was owing to these creditors?
A. At that time it was between 75 and 80 per cent.

Mr. Bennett: At that time?
Mr. Van Dusen: Yes, at that time.

. . . . . .

Q. Now, was there an agreement drawn up?
A. There was.

Mr. Bennett: Show it to him.

By Mr. Van Dusen:

Q. I show you a document here (producing same). Is [fol. 67] that the agreement that was executed by the creditors that I mentioned?

A. It is.

Q. And the Quaker City Sheet Metal Company?

A. It is.

Q. Did you have any discussion with the representative of the Corn Exchange at that time?

A. Yes.

Q. And what was the arrangement you made with that bank?

A. The arrangement,—let me put it this way,—it was rather mutual or allied,—the Creditors Committee, the five creditors, were anxious to execute an agreement so that we could continue in business, and we were naturally interested in finding out if the Corn Exchange Bank would finance the company as it had before. My partner and myself made several calls on the Corn Exchange Bank.

Q. This is at the time of the execution of the agreement?

A. After the first meeting but before the final execution of the agreement.

The Corn Exchange bank agreed to loan us money upon collateral, and upon reporting that back to the five cred- [fol. 68] itors they agreed to sign the agreement, and copies of the agreement were sent to the various home offices of the creditors for signature. Before they were returned completed signed, Mr. Carrigan, my partner and myself——

Q. By partner, you mean the other officer of the company?

A. The other officer of the company, myself, and Mr. Hall, went down, and had a discussion with the bank along the same general lines that Mr. Carrigan and I had been discussing with them before.

Q. Mr. L. Norris Hall, chairman of the Creditors' Committee?

A. That is right, yes, sir.

Q. He was president of L. Norris Hall, Inc.?

A. Yes, sir.

Q. And which is one of the creditors that signed the agreement?

A. That is right.

Q. This arrangement that you made with the bank was part of the general scheme that had to be worked out before the agreement could be executed?

A. That is right.

Q. What were you going to give the bank as security for these advances to carry out the contract?

A. Accounts receivable.

[fol. 69] By Mr. Van Dusen:

Q. Will you explain to His Honor just how these loans were made by the Corn Exchange?

A. Well, we were in the contracting business, and at the end of every month we sent to our customers requests for payment, as is usual in the contracting business, for the value of the work we had performed during that month. As we needed the money we would take these accounts receivable down to the Corn Exchange Bank and pledge them as collateral for a loan.

Q. Did you make any notations on your books of these assignments?

A. Yes, and on the copies of the invoices.

Q. Where did that appear on the books?

A. They were on the top of the ledger sheets.

Q. Stamped?

A. Stamped on the top of the ledger sheets.

Q. What was stamped there?

A. "For value received this account has been assigned to the Corn Exchange National Bank and Trust Company," [fol. 70]—I forget the exact wording of it,—but it was the wording that the Corn Exchange wanted us to put on them.

Q. When these accounts were collected, how were they collected?

A. The payment was received by the company and the check was taken down and given to the Bank.

Q. In other words, you took the checks in payment of the accounts to the Bank? You never deposited the checks in your own account?

A. Never.

Q. You took it to the Corn Exchange?

A. That is correct.

By the Referee:

Q. Did you conform to that practice throughout the entire time?

A. Throughout the entire time, yes.

Q. And this was in keeping with the arrangements with the Corn Exchange?

A. That is correct.

By Mr. Van Dusen:

Q. You subsequently entered into a new contract?

A. That is correct, a larger one.

Q. What was the procedure in connection with this contract?

[fol. 71] A. The procedure in that case, where we needed finances fast, was to assign the contract itself to the Bank.

Q. By that you mean the moneys due under the contract?

A. The moneys due under the contract itself, to the Bank.

Q. The Bank did not assume any obligations under these contracts?

A. None whatever.

Q. Well, now, when you decided to take these new contracts, or before you decided to take new contracts, did you discuss the matter with the Creditors' Committee and the Corn Exchange?

A. First, with the Creditors' Committee, and then after their approval, with the Corn Exchange, and find out if it was a job too much for us to finance,—whether it could be financed in our regular routine of business, and when I had received the approval from both parties we accepted the contract.

Q. Who was on the Committee,—L. Norris Hall, representing L. Norris Hall, Inc., V. W. Heyden, representing the Chase Brass & Copper Co., W. W. Keefer, representing the Apollo Steel Co., B. M. Simpson, of W. A. Simpson & Son, and Norman Klauder, representing the Wheeling [fol. 72] Corrugating Company?

A. That is correct.

Q. And they met about once a month?

A. I would say on an average of once a month.

Q. Mr. Hall was chairman?

A. That is correct.

Q. And he countersigned all checks?

A. Yes, sir.

Q. And he executed the assignments under the contract?
A. That is also correct.
Q. And he signed the notes, too?
A. Yes, he did.
Q. To the bank?
A. Yes.
Q. Mr. Hall and the Committee supervised the conduct of your business?
A. They did.
Q. Mr. Hall was there frequently?
A. Yes, very frequently.
Q. How frequently?
A. Well, twice a week, sometimes oftener.
Q. Were these moneys due under contract assigned at the time the contract was executed?
A. No. The actual assignments would be made some- [fol. 73] time shortly after the contract was accepted. We could not assign something we did not have.
Q. When the Corn Exchange put up some money?
A. No, prior to that.
Q. As the accounts receivable became due under the contract, then they were assigned?
A. That is correct. But, I think I should say here that the Corn Exchange advanced us money for payroll purposes on these contracts prior to the expiration of any one month; in other words, that enabled us to build up the accounts receivable which at the end of the month would then be assigned to the Corn Exchange Bank.
Q. All of the advances, though, were made subsequent to the assignments of moneys due under the contract?
A. Absolutely.
Q. And by the assignment of the money due under the contract you were obligated to assign the accounts receivable under such contract?
A. That is correct.

. . . . . .

[fol. 74] Mr. Bennett: They had double protection themselves—they not only had the assignment of the contract but they also took the assignment of the invoices.

. . . . . .

[fols. 75-76] By Mr. Van Dusen:

. . . . . .

[fols. 77-78] Q. And all of these pledges and assignments were made in consideration of advances by the Bank at the time?

A. That is right.

. . . . . .

[fol. 79] Recross-examination.

By Mr. Bennett:

. . . . . .

[fols. 80-81] Q. Were the invoices which were sent to the customers marked so as to indicate that they were payable by the customer to the Corn Exchange National Bank and Trust Company?

A. No.

Q. They were not. You are definitely certain that the copies of the invoices that were put in your folder contained such a notation?

A. Yes.

. . . . . .

[fol. 82] Hector A. Sinzheimer, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Referee:

Q. What is your full name?

A. Hector A. Sinzheimer.

Q. And your address?

A. 1510 Chestnut Street.

. . . . . .

[fols. 83-92] Mr. Van Dusen: I would like to prove by Mr. Sinzheimer that, first of all, this agreement was extended from time to time by letters written by the creditors to him——

Mr. Bennett: There is no doubt of that, that the Creditors' Committee agreement was extended from time to time notwithstanding its date, until after bankruptcy, October 24, 1940.

Mr. Van Dusen: October 24, 1940.

Mr. Bennett: Yes, that is my understanding—it was in effect at the time of bankruptcy. Obviously, it could not be in effect thereafter, only in so far as it applied to the right of subrogation.

Mr. Van Duser: And secondly, I offer to prove by Mr. Sinzheimer that these loans made by the Corn Exchange from the time of the inception of the subordinate agreement were made with the knowledge and consent of Mr. Hall, representing the Creditors' Committee, and Mr. Sinzheimer of the Bank, and that the Bank advanced this money in consideration of these assignments—for present consideration—and that the moneys have not been paid as set forth in the proof of claim.

Mr. Bennett: I will agree to that.

. . . . . .

[fol. 93] In the District Court of the United States for the Eastern District of Pennsylvania.

In Bankruptcy

Cause No. 21312.

In the Matter of Quaker City Sheet Metal Co., Bankrupt

Opinion and Order of Referee Sur Claim of Corn Exchange National Bank and Trust Co.

This controversy between the trustee in bankruptcy and the assignee of accounts receivable, to whom the assignments were made by the bankrupt as security for loans, arises by reason of the language incorporated in the completely revamped Sec. 60 of the Chandler Act, dealing with preferences.

Sec. 60 (a) provides:

"(a) 'A preference is a transfer, as defined in this Act, of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of the petition in bankruptcy or of the original petition under Chapter X, XI, XII, or XIII of this Act, the effect of which transfer

will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class. For the purposes of subdivisions (a) and (b) of this section, a transfer shall be deemed to have been made at the time when it became so far perfected that no bona fide purchaser from the debtor and no creditor could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein, and, if such transfer is not so perfected prior to the filing of the petition in bankruptcy or of the original petition under Chapter X, XI, XII or XIII of this Act, it shall be deemed to have been made immediately before bankruptcy."

Sec. 60 (b) provides:

"(b) Any such preference may be avoided by the trustee [fol. 94] if the creditor receiving it or to be benefited thereby or his agent acting with reference thereto has, at the time when the transfer is made, reasonable cause to believe that the trustee may recover the property, or, if it has been converted, its value from any person who has received or converted such property, except a bona fide purchaser from or lienor of the debtor's transferee for a present fair equivalent value; Provided, however, that where such purchaser or lienor has given less than such value, he shall nevertheless have a lien upon such property, but only to the extent of the consideration actually given by him. Where a preference by way of lien or security title is voidable, the court may on due notice order such lien or title to be preserved for the benefit of the estate, in which event such lien or title shall pass to the trustee. For the purpose of any recovery or avoidance under this section, where plenary proceedings are necessary, any state court which would have had jurisdiction if bankruptcy had not intervened and any court of bankruptcy shall have concurrent jurisdiction."

The facts of this case are not in dispute. In the spring of 1938, because the bankrupt found itself in financial difficulties for want of working capital, its principal creditors, whose claims now represent a large percentage of all the unsecured claims which have been proved against the bankrupt estate, agreed in writing—the agreement is dated April 27, 1938 and was extended from time to time until August 27, 1940, which is after the bankruptcy petition—to sub-

ordinate their claims to those who would advance the new working capital. Subsequent to the agreement, the creditors, through a creditors' committee, supervised the bankrupt's business and in May, 1938, arranged with the claimant bank for loans upon the security of bankrupt's accounts receivable, which arrangement was continued until the date of bankruptcy, the claimant advancing money and being repaid as the accounts were collected. The claimant was also given assignments of moneys due or to become due under certain contracts which the bankrupt was able to secure, in consideration of advances for payroll and other needs. [fol. 95] It cannot be denied that the creditors' committee knew that the accounts receivable and the assignments of the moneys due under the contracts were being given as collateral security for concurrent advances and that they gave their express approval thereto. It is also clear that the claimant gave no notice to the debtors prior to bankruptcy.

The question for determination is whether within the meaning of the language in the above-cited sections, in the absence of notice by the assignee to the debtors of the accounts receivable prior to bankruptcy, the trustee by operation of law became vested with title to the accounts.

The question has yet to be ruled in this jurisdiction, and the outcome of the dispute is being awaited with much concern by financial institutions, to whom the business of advancing money on the security of assigned accounts, without the necessity of giving notice to the debtors of the accounts, is accounted of the highest practical importance. It is also, of course, important to the small manufacturer or merchant, whose capital is limited and who must often have recourse to financing on the security of his receivables. But for the plainly declared and generally accepted substantive rule of law in Pennsylvania, requiring notice as between successive assignees, which must be observed in the disposition of this controversy—Erie v. Tompkins, 304 U. S. 64—so far as it may be affected by it, the decision of the Supreme Court in Sales Trust Co. v. Manufacturers Finance Co., 264 U. S. 182, and the ruling in other jurisdictions since the Chandler Act amendment could have been regarded as plainly answering the question in favor of the [fol. 96] assignee of the accounts. Re Johnson-Maas Co., Inc., 45 Am. B. R. (N. S.) 32, Advance Sheets, April 1941; Re Talbot Canning Corp., 35 Fed. Supp. 680; Adams v. City

Bank & Trust Co., 115 Fed. (2) 453; E. H. Webb Grocery Co., 32 Fed. Supp. 3.

But, as may readily be observed, Salem Trust Co. v. Manufacturers Finance Co. antedates Erie v. Tompkins and the other cases relied upon by the claimant were all determined on the basis of the substantive law of jurisdictions; which is concededly at variance with the Pennsylvania rule. The rule of law laid down in Phillips Estate (No. 3), 205 Pa. 515, following the English rule as exemplified in Dearle v. Hall, 3 Rus. 1-38, is that as between successive assignees of a fund in the hands of a third person, that assignee, without regard to the date of his assignment, who first gives the debtor notice of it is entitled to be paid first. The basis for the rule lies in the abhorrence of our common law for secret liens, and perhaps, also in the additional consideration that our limited equity jurisdiction requires that equitable principles be blended with common law principles to do adequate justice. As between two innocent parties to a transaction, the one who makes possible a fraud and a consequent injury to another is made to suffer the loss. The first assignee, by failing to give notice to the debtor, makes possible the commission of a fraud on the second bona fide assignee which by notice he could have prevented. Yet the meaning and purpose of the rule may not have the broad effect that, at first blush, it would seem to have in a situation, as here, where the contest is not between successive assignees but between the trustee in bankruptcy and an assignee, unless [fol. 97] it be determined that the trustee takes the place of a second bona fide assignee. If the latter premise is the correct one then it is clear the trustee must prevail. An examination into the rule, however, which has a bearing on the trustee's status, indicates that while the second assignee obtains a superior right to be paid by the debtor of the account, on the theory of an estoppel against the first assignee, the second assignee does not necessarily get a superior title to that of the first assignee. In other words, the second assignee merely gets a superior right to be paid by the debtor, because the debtor becomes a trustee for the assignee who first gives him notice. This is clearly indicated by Phillips Estate (No. 4), 205 Pa. 525, where an assignee who had given no notice of his assignment to the debtor was nevertheless held to have priority over a subsequent assignee who had given notice,

where an attachment had intervened against the fund between the dates of the assignments. The reason for this seeming contradiction of the general rule is, as the Court explains, that the claim under the attachment being prior to the last assignment because it took place before the last assignee gave notice to the debtor, the attaching creditor could take only what remained to the assignor. The attaching creditor could take only what the assignor could assign. "As to him the prior assignments, with or without notice to the accountants, were valid, and so they were as against his attaching creditors, whose rights rise no higher than his." (p. 531.)

The question then narrows itself down to the nature of the trustee's title to or interest in the accounts. Does he [fol. 98] stand in the shoes of a second assignee, that is, a bona fide purchaser, who is presumed to have given notice prior to bankruptcy, and thus has acquired a superior right to the proceeds of the accounts, or does he stand in the shoes of a creditor whose claim is either subject to the assignment or superior to it? Again, the State law must control the situation. State law controls as to what rights a lien or execution creditor could have. The validity of all liens, claims and equities is to be determined by the local law. Thompson v. Fairbanks, 196 U. S. 516; re Press Printers and Publishers, Inc., 24 F. (2) 34. The first supposition—that the trustee stands in the shoes of a bona fide purchaser—notwithstanding the possibilities that such a creditor assignee could well have existed must necessarily be excluded by the definition in the bankruptcy law of what constitutes the trustee's title. A second assignee could well have acquired superior right to payment of the accounts, if he had given notice prior to the bankruptcy. And if in theory, for purposes of bankruptcy administration, he is presumed to exist and the trustee succeeds to his rights then inevitably, it must be repeated, the trustee must prevail or arbitrarily there must be an election between the acceptance of this hypothesis and the conclusions to be drawn from the definition of the trustee's title. By Sec. 70 (a) the trustee is vested by operation of law with the title of the bankrupt as of the date of the filing of the petition in bankruptcy to (5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against

him, or otherwise seized, impounded, or sequestered. This [fol. 99] definition in turn must be read in conjunction with the provision in Sec. 70 (c) which provides that "* * * the trustee, as to all property in the possession or under the control of the bankrupt at the date of bankruptcy or otherwise coming into the possession of the bankruptcy court, shall be deemed vested as of the date of bankruptcy with all rights, remedies and powers of a creditor then holding a lien thereon by legal or equitable proceedings, whether or not such a creditor actually exists; and, as to all other property, the trustee shall be deemed vested as of the date of bankruptcy with all the rights, remedies and powers of an attachment creditor then holding an execution duly returned unsatisfied; whether or not such a creditor actually exists."

Clearly, the bankrupt could not by any honest means have transferred the accounts after their prior assignment to the claimant; so that the trustee can take no title to the accounts, save subject to the prior assignment, on the score of that provision. The provision surely does not contemplate a dishonest transfer to enure for the benefit of creditors. Nor could there have been an attachment of the proceeds of the accounts and their sale under judicial process, save subject to the rights of the claimant assignee to priority in distribution, as declared by the Phillips case (supra); so that the trustee can acquire no superior right on that score. Is his status then modified by the provision which vests him, as to property in the bankrupt's possession or control or which otherwise comes into the possession of the bankruptcy court, "with all the rights, remedies, and powers of [fol. 100] a creditor then holding a lien thereon by legal or equitable proceedings?" Whatever lien the trustee could thus acquire on the proceeds of the accounts in the bankrupt's possession would necessarily be subject to the prior lien or title of the assignee. And as we have seen, if the trustee's claim is predicated as to outstanding accounts on "all the rights, remedies and powers of an attachment creditor then holding an execution duly returned unsatisfied", he takes subject to the assignment in any distribution which may thereafter follow. See Hawley Down-Draft v. Chidsey (3d Cir.) 238 Fed. 122—38 Am. B. R. 219.

If the foregoing reasoning is correct, then the trustee's contention, that by reason of the failure to give notice to the debtors, the assignment of the accounts to the claimant must be considered as having been made immediately be-

fore the bankruptcy, a fortiori it must be taken as a transfer for an antecedent debt and therefore voidable because the assignee had reasonable cause to believe the assignor was insolvent, must fail. The conclusion is that the assignments were made for a present consideration because the title to them became perfected when made.

This result obviates the need for consideration of the claimant's contention that in any event the creditors who were parties signatory to the subordination agreement are estopped from asserting their claims on a parity with it.

[fols. 101-105] ORDER

And Now, to wit, this 21st day of April, 1941, It Is Ordered, Adjudged and Decreed that the claim of the Corn Exchange National Bank and Trust Company be, and it hereby is, allowed as a secured claim in the sum of $7,954.51.

(Signed) Henry W. Braude, Referee in Bankruptcy.

[fol. 196] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 21312

In Bankruptcy

In re QUAKER CITY SHEET METAL CO., Bankrupt

ORDER AFFIRMING ORDERS OF REFEREE—Filed September 17, 1941

The orders of the Referee are affirmed.

By the Court, Kirkpatrick, J.

[fols. 107-112] In the District Court of the United States for the Eastern District of Pennsylvania

In Bankruptcy

Cause No. 21312

In the Matter of Quaker City Sheet Metal Co., Bankrupt

Final Decree—Filed November 10, 1941

Sur Certificate for Review

Re Claim of Corn Exchange National Bank and Trust Co.
Claim of Edward C. Dearden, Sr.

And now, to wit, November 10, 1941, this cause having come on to be heard and having been argued by counsel; and thereupon upon consideration thereof, it is

Ordered, Adjudged and Decreed that the Orders entered on April 21, 1941 by Henry W. Braude, Esq., Referee in Bankruptcy, as follows, to wit:

"And now, to wit, this 21st day of April, 1941, it is

Ordered, Adjudged and Decreed that the claim of the Corn Exchange National Bank and Trust Company be and it hereby is, allowed as a secured claim in the sum of $7,954.51."

"And now, to wit, this 21st day of April, 1941, it is Ordered, Adjudged and Decreed that the claim of Edward C. Dearden, Sr. must be and hereby is, allowed as a secured claim in the sum of $1,550.00."

Be and the Same Are Hereby Affirmed.

By the Court: (Sgd.) Kirkpatrick, J.

[fol. 113] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 114] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 115-116] **Proceedings in the United States Circuit Court of Appeals for the Third Circuit**

In United States District Court

Relevant Docket Entries

Omitted. Printed side page 1 ante.

[fols. 117-123] In United States District Court

Opinion and Order of Referee Sur Claim of Corn Exchange National Bank and Trust Company

Omitted. Printed side page 93 ante.

[fol. 124] Order

Omitted. Printed side page 101 ante.

In United States District Court

Opinion and Order of Referee

Sur Claim of Edward C. Dearborn, Sr.

Omitted. Printed side page 30 ante.

[fols. 125-138] In United States District Court

Memorandum

Sur Certificates for Review

Omitted. Printed side page 106 ante.

In United States District Court

Final Decree

Sur Certificate for Review

Omitted. Printed side page 107 ante.

[fol. 139] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION

And afterwards, to wit, the 18th day of March, 1942, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Albert B. Maris, Honorable Charles Alvin Jones and Honorable Herbert F. Goodrich, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 12th day of August, 1942, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 140] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1941

No. 7893

In Re QUAKER CITY SHEET METAL CO., Bankrupt

Appeal of Norman Klauder, Trustee in Bankruptcy

Appeal from the District Court of the United States for the Eastern District of Pennsylvania

OPINION—Filed August 12, 1942

Before Maris, Jones and Goodrich, Circuit Judges

MARIS, *Circuit Judge:*

At the beginning of 1940 Quaker City Sheet Metal Company was in financial difficulties and unable to complete its contracts and meet its payroll for lack of working capital. Between January 19, 1940 and April 5, 1940 the Corn Exchange National Bank and Trust Company made several loans to the company. On April 12, 1940 Edward C. Dearden, Sr. made a loan to the company. Concurrently with each loan and as collateral security for it the company assigned contracts and the accounts receivable arising from

[fol. 141] the contracts. The assignments were made in Pennsylvania, with the knowledge and consent of a creditors' committee which represented most of the general claims against the company. Neither the bank nor Dearden gave notice of the assignments to the parties who owed the accounts receivable. On April 18, 1940 an involuntary petition in bankruptcy was filed against the company and on May 7, 1940 the company was adjudicated a bankrupt. At this time the company was indebted to the bank in the sum of $7,954.51 and to Dearden in the sum of $1,550. The bank filed a proof of claim as a secured creditor, to which the trustee in bankruptcy objected. An issue was framed upon a petition for reclamation filed by Dearden. Both claims were passed upon by the referee in bankruptcy who allowed them as secured claims. The District Court for the Eastern District of Pennsylvania entered a decree affirming the orders of the referee. The trustee in bankruptcy has taken this appeal. The trustee concedes the indebtedness but contends that the assignments are voidable preferences by virtue of subdivisions a and b of section 60 of the Bankruptcy Act, as amended, (11 U. S. C. A. § 96(a) (b)).

We are primarily concerned with the provisions of subdivision a of Section 60, which are as follows:

"a. A preference is a transfer, as defined in this Act, of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of the petition in bankruptcy, or of the original petition under chapter X, XI, XII, or XIII of this Act, the effect of which transfer will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class. For the purposes of subdivisions a and b of this section, a transfer shall be deemed to have been made at the time when it became so far perfected that no bona fide purchaser from the debtor and no creditor could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein, and, if such transfer is not so perfected prior to the filing of [fol. 142] the petition in bankruptcy or of the original petition under chapter X, XI, XII, or XIII of this Act,

it shall be deemed to have been made immediately before bankruptcy."

It will be noted that the subdivision comprises two sentences. The first lays down the criteria for determining whether a transfer is preferential. The second sentence provides that for the purposes of subdivision a, inter alia, a transfer shall not be deemed to have been made until it has been perfected as against bona fide purchasers from and creditors of the debtor.

It will be seen that one of the criteria laid down by the first sentence of subdivision a for determining whether a transfer is to be treated as a preference is that it is "for or on account of an antecedent debt." The question with which we are primarily concerned in this case involves the meaning of this phrase. The question is this. In determining whether a debt is antecedent to a transfer made on account of it are we to apply the rule laid down in the second sentence as to when a transfer is to be deemed as having been made? In other words, is a debt to be treated as antecedent to a transfer actually made contemporaneously but not perfected as against purchasers and creditors of the debtor until a later time? We think that a fair construction of the statutory language requires an affirmative answer to this question. The rule which the second sentence of subdivision a lays down as to the time when a transfer is to be deemed to have been made is stated to be "for the purposes of subdivision a," inter alia. It is thus clear that the rule is intended to apply to the provisions of the first sentence of that subdivision insofar as they involved questions having to do with the time of making a transfer. There is no indication that its application to the first sentence is to be restricted to the mere determination of whether a transfer is made while the debtor is insolvent and within four months of bankruptcy. On the contrary it is obvious that the time of the making of a transfer is the essential element in de- [fol. 143] termining whether a debt on account of which it is made was antecedent to it.

We conclude that the rule laid down in the second sentence of subdivision a of Section 60 for determining the time of the making of a transfer applies to the determination of the question whether the transfer was made for or on account of an antecedent debt. In this conclusion we are

supported by students of the act who have forcefully pointed out that the purpose of Section 60a, as amended by the Chandler Act of 1938, was to strike down secret liens even though given for a present consideration.[1] We recognize that in the case of Adams v. City Bank and Trust Co., 115 F. 2d 453 (1940), the Circuit Court of Appeals for the Fifth Circuit reached a contrary conclusion but for the reasons which we have given we are unable to follow the construction of the statute made in that case.

There remains for consideration the question whether under the law of Pennsylvania subsequent bona fide assignees or attaching creditors of the company could have acquired rights to the accounts receivable here in question superior to the rights of the bank and Dearden under their prior assignments in view of the fact that the latter gave no notice of their assignments to the persons owing the accounts. In other words, since the bank and Dearden gave no such notice prior to bankruptcy, must the transfers to them be deemed under the provisions of Section 60a to have been made immediately before bankruptcy and, therefore, for antecedent debts? If so, it is clear that, since an assignment is a transfer within the definition of Section 1(30) of the Bankruptcy Act as amended (11 U. S. C. A. § 1(30)), their assignments were preferences which were voidable by the trustee under subdivision (b) of Section 60 if the other criteria laid down in Section 60 were present.

The trustee urges that under the law of Pennsylvania [fol. 144] a subsequent bona fide purchaser of the accounts receivable from the company could have acquired rights to the accounts superior to those of the bank and Dearden provided only that he gave notice before they did.[2] In

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[1] McLaughlin, Aspects of the Chandler Bill to Amend The Bankruptcy Act (1937), 4 U. of Chicago L. Rev. 369, 388; Mulder, Ambiguities in the Chandler Act (1940) 89 U. of Pa. L. Rev. 10, 25; 3 Collier on Bankruptcy (14th Ed.) § 60.48.

[2] The Pennsylvania Act of July 31, 1941, P. L. 606, § 1 (69 Pa. P. S. § 561), which dispenses with the necessity for the giving of notice of an assignment of accounts receivable if a record of the assignment is made upon the books of account of the assignor, can have no bearing upon the assignments in this case because they were made prior to the effective date of that act.

support of this proposition the case of Phillips's Estate (No. 3), 205 Pa. 515, 55 A. 213 (1903), is cited. That case involved a contest between successive assignees of a fund in the hands of a third person. The court found in favor of the subsequent assignee, adopting the rule that (p. 524) "if an assignee fails to give notice to the person holding the fund assigned to him, a subsequent assignee, without notice of the former assignment, will, upon giving notice of his assignment, acquire priority." It is argued by the bank and Dearden that the effect of this ruling is neutralized by another decision in the same estate handed down by the Pennsylvania Supreme Court on the same day, Phillips's Estate (No. 4), 205 Pa. 525, 55 A. 216 (1903), in which the court awarded priority to an assignee who had not given notice over a subsequent assignee who had given notice. It appeared that a claimant to a share in a decedent's estate had transferred his interest to successive assignees. The first did not give notice—the second did. In the period intervening between the two assignments a creditor of the claimant served the accountants with a writ of foreign attachment. The court awarded the creditor priority over the later assignee because his attachment was first in time. His lien, however, was subordinated to that of the first assignee. The court reasoned that as between the assignor and the assignee the assignment was valid whether with or without notice, that the creditor's right rose no higher and that he could attach only that which the assignor had left after the assignment.

It will be seen that the decision in Phillips's Estate (No. 4) involved the determination of the rights of an [Vol. 145] attaching creditor. The court's ruling was based upon the proposition that an attaching creditor could not secure rights superior to those of a prior assignee even though the latter had not given notice. The case, however, did not in any way modify the ruling in Phillips's Estate (No. 3) as to the position of a subsequent assignee who was first in giving notice. The rule as to the time of making a transfer, which is laid down in the second sentence of Section 60a, cannot operate to fix that time as of the time of actual transfer unless two bases for such operation are present. It must appear to have then been so far perfected that (1) no bonafide purchaser and (2) no creditor could thereafter have acquired superior rights in the property transferred. In the case before us it is immaterial that

Phillips's Estate, (No. 4), which deals with the rights of creditors, provides one of the bases for the operation of the rule in favor of the date of actual transfer since Phillips's Estate (No. 3), which fixes the rights of purchasers does not provide the other basis. As we have said, the statute requires the presence of both. Consequently if, as here, one is absent, the date of transfer must be deemed to be postponed to the later date fixed by the second sentence of subdivision a, in this case the date of bankruptcy. It follows that the assignments to the bank and Dearden must be deemed for the purposes of the administration of the company's estate in bankruptcy to have been made for or on account of antecedent debts of the company and must be treated as preferences voidable at the instance of the trustee in bankruptcy if the other elements of a voidable preference set forth in Section 60 are present."

The decree of the district court is reversed and the cause is remanded with directions to take such further proceedings therein as may be consistent with this opinion.

JONES, *Circuit Judge*, dissenting:

The construction which the majority of the court place upon Sec. 60 (a) of the Bankruptcy Act, as amended by [fol. 146] the Chandler Act, seems to me to deny the intended effect of the word "antecedent" (as now employed in the Act to define the nature of debt capable of furnishing the basis for a preference) and, at the same time, to give an effect to the provision with respect to the presumed time of transfer under certain specified conditions, contrary to the intent of that provision.

The Chandler Act amendment of Sec. 60 (a) was the first time that the requirement of a debt's antecedency was prescribed by a bankruptcy statute in relation to the establishment of a preference.[1] True enough, such had actually been the law prior to the passage of the Chandler Act, but only by judicial construction. What, therefore, had been the law in material regard, the Chandler Act redeclared by providing in Sec. 60 (a) that "A preference is a transfer

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[1] 3 Collier on Bankruptcy (14th ed.) par. 60.19, p. 818.

* * * of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt * * * ." The Chandler Act made no new or special definition of "antecedent debt" but left the meaning of that term to the law's prior understanding of it. In these circumstances I am unable to perceive how it can be inferred that Congress intended to transform a debt actually incurred for a present consideration of full value into an antecedent debt simply because a further provision of Sec. 60 (a) postpones to "immediately before bankruptcy" the time of a transfer actually made contemporaneously with the incurrence of the debt but not perfected under local law against a *bona fide* purchaser and creditors of the transferor.

With a preference unqualifiedly defined, as above quoted, as a transfer for an *antecedent* debt (the transferor being insolvent and within four months of bankruptcy), it was then provided by the succeeding sentence of Sec. 60 (a) that "For the purpose of subdivisions a and b of this section, a transfer shall be deemed to have been made at the time when it became so far perfected that no bonafide purchaser from the debtor and no creditor could thereafter [fol. 147] have acquired any rights in the property so transferred superior to the rights of the transferee therein, and, if such transfer is not so perfected prior to the filing of the petition in bankruptcy * * * it shall be deemed to have been made immediately before bankruptcy."

From the foregoing provision the majority conclude (and they have support in the views of learned authors [2]) that "a debt is to be treated as antecedent to a transfer actually made contemporaneously but not perfected as against purchasers and creditors of the debtor until a later time." And so, according to the prevailing argument, the entire transaction of contemporaneous loan and transfer is split

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[2] See McLaughlin, Aspects of the Chandler Bill to Amend the Bankruptcy Act (1937) 4 University of Chicago Law Review 369, 388; Mulder, Ambiguities in the Chandler Act (1940) 89 University of Pennsylvania Law Review, 10, 25; 3 Collier on Bankruptcy (14th ed.) par. 60.48, p. 962 et seq. But see contra 4 Remington on Bankruptcy (4th ed.) § 1717 (text and appendix).

apart and the unperfected[3] transfer is "deemed to have been made immediately before bankruptcy", as Sec. 60 (a) provides, while the loan for which the transfer was contemporaneously made retains the original date of the actual transaction and thus becomes antecedent in relation to the time of the transfer, as statutorily presumed under the attending circumstances. To so hold seems to be a striking instance of lifting oneself by one's bootstraps and terminates in a result which I do not think Sec. 60 (a) was intended to bring about. When the time of the transfer is brought to "immediately before bankruptcy" by virtue of Sec. 60 (a) because of a want of perfection thereof as against a *bona fide* purchaser and creditors of the transferor, the fact as to whether the unperfected transfer was for an antecedent debt or for a debt contemporaneously incurred is still to be reckoned with on the basis of actuality. It will be observed that Sec. 60 (a) does not strike down an unperfected transfer but merely moves, by legal presumption, the time of its occurrence to "immediately before bankruptcy".

In my opinion, the provision in Sec. 60 (a) with respect to the presumed time of transfer under the specified condi- [fol. 148] tions was incorporated in the Chandler Act in order to bring constructively within the four months of bankruptcy (and thus render adjudicable on that basis) all unperfected transfers made while the debtor was insolvent more than four months prior to bankruptcy. Before the Chandler Act, the law did not reach such earlier transfers by an insolvent debtor. But under Sec. 60 (a), as now amended, any unperfected transfer by an insolvent can be assailed as a preference if, when actually made, the consid-

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[3] The term "unperfected" as used herein should not be taken to imply that the assignments in this case were wanting in legal validity. Under local law they were binding and conclusive as to the assignor and its creditors from the time they were made. See Phillips's Estate (No. 4), 205 Pa. 525, 531. They were, moreover, good against the world except that a subsequent bona fide purchaser without notice could have acquired rights in the assigned accounts superior to the rights of the original assignees if he was first to give notice of his acquisition to the persons owing the accounts. It was only to that limited extent that there was any want of perfection in the transfers.

eration therefor was an antecedent debt. So construed, the provision in Sec. 60 (a), relating to the legally presumed time of transfer, works an important change in the law but it has nothing to do with determining the relative date of the incurrence of the debt for which an unperfected transfer was contemporaneously made. Whether the unperfected transfer, when made, was made on account of an antecedent debt or for a present consideration of full money's worth remains the criterion for determining whether the transfer constituted a preference.

What the bankruptcy law is primarily concerned with is the equitable distribution of a bankrupt's estate among creditors. A preference is the favoritism by an insolvent debtor of one creditor over others.[4] But, in order that a payment or transfer by a debtor to one creditor may amount to a preference, it is necessary that the debtor's estate be thereby depleted so that the remaining creditors cannot ratably receive commensurate shares on account of their claims.[5] A transfer therefore which does not reduce the value of a debtor's estate because he contemporaneously receives full value in exchange is not a preference. It is hardly likely that Congress intended by bringing an unperfected transfer to "immediately before bankruptcy" to constitute a preference out of a transaction which in no way depleted the debtor's estate. Bankruptcy does not disapprove of an insolvent debtor's giving security, even down to the date of bankruptcy, for a present loan of full value. [fol. 149] Such action may possibly sustain the breath of fiscal life in a gasping debtor until complete recovery to the ultimate benefit of creditors generally. Indeed, it was in furtherance of that hope that the subject loans in the instant case were given and the transfers made as security therefor. The debtor's estate was in no way depleted but received a needed and desired present benefit. In any view, a contemporaneous transfer in such circumstances is no more a preference under the Chandler Act amendment of Sec. 60 (a) than it was prior to the amendment.

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[4] 3 Collier on Bankruptcy (14th ed.) par. 60.02, pp. 750-751.

[5] See Newport Bank v. Herkeimer Bank, 225 U. S. 178, 184; also 3 Collier on Bankruptcy (14th ed.) par. 60.19, p. 819.

Nor am I able to see how Sec. 60 (a) was intended, as the majority suggest, "to strike down secret liens even though given for a present consideration". The time of the making of a secret lien, if perfected under local law, is no more deemed to have been "immediately before bankruptcy" than is the time of the making of a perfected open lien. And, by the same token, an unperfected open lien is subject to the same limitation under Sec. 60 (a) as is an unperfected secret lien. In no sense does Sec. 60 (a) seek to discriminate between secret and open liens. It simply prescribes the requisites under the bankruptcy law for determining the existence of a preferential transfer. And this, it does without attempting in any way to pass disapprovingly upon what may be a valid (although secret) lien under local law.

The transfers in this case, judged on the basis of having been made "immediately before bankruptcy" (actually they were made within four months of bankruptcy), were valid, having been given as security for debts contemporaneously incurred for full present consideration. Accordingly, I should affirm the order of the District Court.

[fol. 150] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1941

No. 7893

In Re QUAKER CITY SHEET METAL CO., Bankrupt,

Appeal of NORMAN KLAUDER, Trustee

JUDGMENT—August 12, 1942

Appeal from the District Court of the United States, for the Eastern District of Pennsylvania.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby

reversed, with costs, and the cause is remanded to the said District Court with directions to take such further proceedings as may be consistent with the opinion of this court.

Albert B. Maris, Circuit Judge.

August 12, 1942.

[File endorsement omitted.]

[fol. 151] UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, Set.:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, Do Hereby Certify the foregoing to be a true and faithful copy of the original Appendix to Brief for Appellant, as constituting the portions of the record before this court at argument; and proceedings in this court in the Matter of Quaker City Sheet Metal Co., Bankrupt, Appeal of Norman Klauder, Trustee, No. 7893, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 19th day of September in the year of our Lord one thousand nine hundred and forty-two, and of the Independence of the United States the one hundred and sixty-seventh.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal.)

[fol. 152] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1942

No. —

[Title omitted]

STIPULATION OF COUNSEL PURSUANT TO RULE 38 (8) TO OMIT NON-ESSENTIAL MATTERS FROM PRINTED RECORD

And Now, to wit, this 12th day of September, 1942, It Is Stipulated and Agreed by and between Jenkins, Bennett & Libby, Attorneys for Respondent; and Drinker, Biddle &

Reath, Attorneys for Corn Exchange National Bank and Trust Company, one of the Petitioners; and Saul, Ewing, Remick & Harrison, Attorneys for Edward C. Dearden, Sr., the other Petitioner, that in connection with the Petition for Writ of Certiorari to the Supreme Court of the United States in the above matter, about to be filed by Petitioners, the following portions of the certified transcript of the record in the Circuit Court of Appeals for the Third Circuit shall alone be printed for the uses of the Supreme Court of the United States, the page numbers being the numbers designated on the certified transcript of the typewritten portion of said record in said Circuit Court:

1. The relevant docket entries, appearing at pages 1 and 2, shall be printed.

2. The Petition for Reclamation of Edward C. Dearden, Sr., page 5 to and including page 15, shall be printed, [fol. 153] excluding, however, the affidavit of Edward C. Dearden, appearing on page 9.

3. The Answer of Norman Klauder, Trustee of the Bankrupt Estate, to the Petition for Reclamation, page 20 to and including page 23 shall be printed.

4. The following testimony from the hearing on the claim of Edward C. Dearden, Sr., held on March 27, 1941, shall be printed:

(a) Page 24, line 1, to and through the words "Mr. Mikell:", appearing in the third line from the bottom of page 24.

(b) Page 26, line 15 to the end of said page 26.

(c) Page 27, line 1, to and through line 9 on said page 27.

(d) Page 28, line 4 to and through line 18 on said page 28.

5. The Opinion and Order of the Referee, Henry W. Braude, Esq., sur claim of Edward C. Dearden, Sr., appearing on page 30, shall be printed in its entirety.

6. The following portion of the Proof of Secured Claim of Corn Exchange National Bank and Trust Company shall be printed:

(a) Page 36 to and including line 24 on page 40.

(b) Page 41, line 12 to end of page on page 41, excluding, however, notary's affidavit at bottom of page 41.

(c) Exhibit 1 on page 42 shall be printed, excluding therefrom, however, the entire portion of said Exhibit which is in small type and which begins with the words "including all cash" and ends with the words "protest of this note". This exhibit shall be followed by the following statement: "Exhibits 2, 3, 4 and 5, except for amounts and dates, are substantially identical to Exhibit 1."

[fol. 154] (d) Exhibit 6, appearing on page 44, shall be printed. This Exhibit shall be followed by the following statement: "Exhibits 7 and 8, except for dates and amounts, are substantially identical to Exhibit 6".

(e) Exhibit 9, appearing on page 46, shall be printed, followed by the following statement: "Except for the name of the Purchaser, the nature of the work, and dates, Exhibit 10 is identical to Exhibit 9."

7. The following portions of the notes of testimony at the hearing on the claim of Corn Exchange National Bank and Trust Company, held March 27, 1941, shall be printed:

(a) All of page 51 shall be printed.

(b) Line 19 to the end of page 55 shall be printed.

(c) Line 1 to and including line 16 on page 56 shall be printed.

(d) Line 9 to and including line 23 on page 58 shall be printed.

(e) Line 22 to the end of page 60 shall be printed.

(f) Line 1 on page 61 shall be printed.

(g) The last line on page 61 shall be printed.

(h) Line 1 to and including the words "agreed to", in line 6 on page 62, shall be printed.

(i) Line 24 to the end of page 62 shall be printed.

(j) Line 1 to and including line 3 on page 63 shall be printed.

(k) Line 17 to and including line 22 on page 64 shall be printed.

(l) Line 1 to and including line 21, ending "in business." on page 65, shall be printed.

[fol. 155] (m) Line 13, beginning "Q. And approximately", to and including line 17, on page 66, shall be printed.

(n) Line 22, beginning "Now was there", to the end of page 66, shall be printed.

(o) All of pages 67 and 68 shall be printed.

(p) Line 6, beginning "By Mr. Van Dusen:", to the end of page 69, shall be printed.

(q) All of pages 70, 71 and 72 shall be printed.

(r) Line 1 to and including line 21, ending "is correct", on page 73, shall be printed.

(s) Line 6, beginning "Mr. Bennett:", to and including line 9 on page 74, shall be printed.

(t) Line 12 on page 75, being "By Mr. Van Dusen:", shall be printed.

(u) Line 14, beginning "And all of", to and including line 17 on page 77, shall be printed.

(v) Line 13 on page 79, being "By Mr. Bennett:", shall be printed.

(w) Line 11, beginning "Were the invoices", to and including line 19 on page 80, shall be printed.

(x) Line 19, beginning "Hector A. Sinzheimer having been", to and including line 26, being "1510 Chestnut Street", on page 82, shall be printed.

(y) Line 2, beginning "Mr. Van Dusen:", to and including line 25 on page 83, shall be printed.

8. The entire Opinion and Order of the Referee, Henry W. Braude, Esq., sur claim of Corn Exchange National Bank and Trust Company, appearing on page 93 to and including page 101, shall be printed.

9. Memorandum Order filed September 17, 1941, signed by Judge Kirkpatrick, appearing on page 106, shall be printed.

[fol. 156] 10. Final Decree, filed November 10, 1941, by Judge Kirkpatrick, appearing on page 107, shall be printed in its entirety.

11. All of the proceedings in the Circuit Court of Appeals for the Third Circuit, including the opinion and dissenting opinion of the Judges of the Circuit Court of Appeals for the Third Circuit, shall be printed.

Jenkins, Bennett & Libby, by Bertram Bennett.
Drinker, Biddle & Reath, by Charles J. Biddle.
Saul, Ewing, Remick & Harrison, by Thomas P. Mikell.

[fol. 55] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1942

No. —

CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY and Edward C. Dearden, Sr., Petitioners,

vs.

NORMAN KLAUDER, Trustee of the Estate of Quaker City Sheet Metal Co., Bankrupt

AMENDMENT TO STIPULATION OF COUNSEL OMITTING NON-ESSENTIAL MATTERS FROM PRINTED RECORD

And Now, to wit; this 23rd day of September, 1942, It is Stipulated and Agreed by and between Jenkins, Bennett & Libby, Attorneys for Respondent; and Drinker, Biddle & Reath, Attorneys for Corn Exchange National Bank and Trust Company, one of the Petitioners; and Saul, Ewing, Remick & Harrison, Attorneys for Edward C. Dearden, Sr., the other Petitioner, that the Stipulation of Counsel dated September 12, 1942, on file with the Clerk of the Supreme Court of the United States in the above-entitled matter, shall be amended in the following respects:

Paragraph 11 of said Stipulation of Counsel dated September 12, 1942, shall be amended to read as follows:

"11. All of the proceedings in the Circuit Court of Appeals for the Third Circuit, including the opinion and dissenting opinion of the Judges of said Circuit Court of Appeals, shall be printed except the following:

(a) The motion by Corn Exchange National Bank and Trust Company and Edward C. Dearden, Sr., Appellees, to dismiss the appeal, which motion was filed with the Clerk of the Circuit Court on December 10, 1941.

[fol. 56] (b) The amended motion by Corn Exchange National Bank and Trust Company and Edward C. Dearden, Sr., Appellees, to dismiss the appeal, which amended motion was filed with the Clerk of the Circuit Court on December 15, 1941.

(c) Answer of Norman Klauder, Trustee of the Estate of Quaker City Sheet Metal Co., Bankrupt, Appellant, to Appellees' motion to dismiss the appeal.

(d) The order of the Circuit Court of Appeals for the Third Circuit denying the motion of Appellees to dismiss the appeal, which order was filed January 20, 1942.

Jenkins, Bennett & Libby, by Bertram Bennett;
Drinker, Biddle & Reath, by Charles S. Biddle;
Saul, Ewing, Remick & Harrison, by T. P. Mikell.

[fol. 57] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 9, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.